Defending the impairment argument

Bruce Philip Blackshaw

ABSTRACT

Kyle van Oosterum and Emma Curran have recently argued that the impairment argument against abortion is weak and accomplishes little. They also claim that impairment fails to explain what makes giving a child fetal alcohol syndrome (FAS) immoral, which is an important premise of the argument. Here, I explain that the impairment argument is not as weak as they believe. Further, I argue that impairment offers a superior explanation for what makes giving a child FAS immoral than their proposal based on creative beneficence.

INTRODUCTION

Perry Hendricks' impairment argument against abortion is known for its claim that abortion is immoral irrespective of the moral status of the fetus.[1] It is based on the impairment principle: if it is immoral to impair an organism O to the nth degree then, ceteris paribus, it is immoral to impair O to the n+1 degree.[1] The impairment argument also requires an additional premise: that causing a fetus to develop fetal alcohol syndrome (FAS) impairs the fetus, and that this is uncontroversially immoral. Since abortion impairs a fetus to a higher degree than inflicting FAS, the impairment principle, therefore, entails that abortion is also immoral.

There have been numerous criticisms of the ceteris paribus clause,[2] and in response, Hendricks and I have developed a modified version of the impairment principle that replaces it:

> If it is immoral to impair an organism O to the nth degree for reason R, then, provided R continues to hold (or is present) and there are no over-riding reasons R*, it is immoral to impair O to the n+1 degree.[2]

We provide a simple test for judging when R* over-rides R: if it over-rides R for the n+1 degree impairment, it will also over-ride R for the nth degree impairment.[2] Applying the modified impairment principle to abortion and FAS, if reason R* is an over-riding reason why abortion should be permissible, then it should also be an over-riding reason why causing FAS is permissible.

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Kyle van Oosterum and Emma Curran concede that the impairment argument 'captures a very natural idea'.[3] However, they argue that there are many over-riding reasons for having an abortion that, when applied to FAS, outweigh reasons against causing FAS. This renders the impairment argument ineffectual. Further, they claim that impairment fails to explain why causing FAS is immoral, and provide what they believe to be a more plausible alternative account based on comparative well-being. In this paper, I respond to these criticisms. First, I examine their over-riding reasons, and conclude that even if they are granted for FAS, they are inapplicable for more severe impairments. Second, I show that impairment offers a superior explanation for the immorality of causing FAS than their alternative account does.

Over-riding reasons

First, let's consider van Oosterum and Curran's argument regarding over-riding reasons. They believe there are many reasons that prochoice advocates provide for the permissibility of abortion that also apply for the permissibility of causing FAS, which means they would qualify as over-riding reasons. For example, they believe it would be permissible for a woman with an unwanted pregnancy to have the fetus removed and gestated ex utero, even if this will 'predictably cause developmental impairments to the fetus of a degree and kind analogous to FAS'.[3] I don't share van Oosterum and Curran's intuition: I don't think it's permissible to cause developmental impairments of this nature to a fetus solely because of a strong desire to not continue a pregnancy.[i] However, it is possible that this disparity in intuitions could be attributed to existing prochoice or prolife commitments, as van Oosterum and Curran suggest.[ii] They conclude that this means the impairment argument is inefficacious: it is reducible to weighing familiar reasons for the permissibility of abortion.

However, van Oosterum and Curran do not seem to realise that the impairment argument uses FAS merely as an example of impairment, probably because it is a relatively common condition known to be caused by alcohol consumption during pregnancy, and it is also uncontroversial to claim it is immoral to deliberately cause FAS. If our intuitions regarding over-riding reasons and FAS are thought to be unclear, then we can consider other, more severe impairments to use with the impairment principle. Hendricks is clear that death is a maximal impairment of the fetus,[4] and so any other impairment that does not cause death is a lesser impairment, and can therefore be used in the impairment argument as an n degree impairment (compared with death's n+1 degree impairment).

There are other teratogenic drugs that cause far more severe impairments than FAS that we could consider, such as thalidomide. Thalidomide was used in the 1950s and 1960s to treat nausea in pregnant women.[5] It was later found to cause severe birth defects, including phocomelia, a condition where limbs are extremely shortened or absent.[5] Prescribing thalidomide was described as a tragedy, and resulted in substantial changes in toxicity testing of pharmaceuticals.[5] Would it be permissible to inflict such severe birth defects on a developing fetus in order to avoid continuing a normal pregnancy? In my view, the only circumstances in which this would be permissible would be if it were necessary to save a person's life.

If this is not considered sufficient for the impairment argument to be efficacious for most pregnancies, even more severe impairments can be examined, since they are still n degree impairments in comparison to the n+1 degree impairment inflicted by abortion. For example, it seems unlikely that prochoice or prolife advocates would consider it permissible to impair a fetus such that it will suffer severe pain for the duration of its life. More generally, no matter what the reason for ending a pregnancy, a severe enough impairment can be found for which that reason fails to be an over-riding reason, and therefore, the impairment argument will succeed.

To defeat this conclusion, van Oosterum and Curran would need to argue that, *contra* Hendricks, abortion does not always inflict a comparatively greater impairment on a fetus than any other action that does not kill the fetus.

[i] I accept that instances of pregnancy as a result of rape might result in quite different intuitions.

[ii] I will grant van Oosterum and Curran the point regarding existing prochoice and prolife commitments and their influence on our intuitions for the sake of argument and lack of space. However, I think some empirical work needs to be done to establish their claim. Prochoice philosophers who do not support Thomson-style reasoning (roughly, that pregnant women have the right to withhold their body from supplying life support to the fetus) may not share their intuition, for example.

Why is causing FAS immoral?

van Oosterum and Curran's second major criticism is regarding why causing FAS is immoral. The impairment argument takes as a basic premise that deliberately causing a fetus to develop FAS is immoral.[1] Further, it states that this action is immoral because it impairs the fetus, preventing it from developing properly.[1]

Contra Hendricks, van Oosterum and Curran argue that impairing the fetus is not why causing FAS is immoral. They claim that 'the impairment of the fetus just happens to be coincident with the characteristic which makes FAS immoral'.[3] They suggest the example of a pregnant woman who receives a diagnosis that her fetus will not survive to full term. In their view, if the pregnant woman begins to drink alcohol knowing that the fetus will not survive anyway, this is not immoral. While I'm not as certain of this as van Oosterum and Curran, my intuition regarding its immorality is certainly weaker than in the case of deliberately causing a healthy fetus to develop FAS. They then argue that the alcohol consumption of a pregnant woman in this scenario will impair the fetus in exactly the same way that a fetus that will be born is impaired by alcohol consumption. Since the impairment in both cases is identical but our moral intuitions differ, the moral asymmetry must be for reasons other than impairment.

van Oosterum and Curran suggest that this asymmetry can be explained by Savulescu's principle of procreative beneficence, which he proposes in the context of in vitro fertilisation and preimplantation genetic diagnosis.[6] Savulescu states that when having children, the child expected to have the best life should be selected, 'based on the relevant, available information'.[6] When a fetus is expected to survive, this principle clearly implies that causing FAS is immoral. In the case of a fetus where it is known it will not survive to full term, van Oosterum and Curran argue that it implies that consuming alcohol is not wrong, because 'there is no entity who is wronged or will be wronged'.[3] They explain that the moral work is done by 'the well-being of the entity that may or may not come to exist', not impairment.[3] Clearly, this reasoning also applies to the more severe impairments I have suggested in the previous section.

However, there is an alternative explanation based on impairment that van Oosterum and Curran have overlooked. They claim that impairment cannot explain this asymmetry, because the impairment is identical in both cases. In one crucial aspect, the impairment is not identical: a fetus that has been diagnosed with fatal development issues is already maximally impaired. For example, the fetus will never develop its cognitive abilities, because its impending death impairs it from doing so. Arguably, its mother drinking alcohol cannot impair it any further, and this is able to account for van Oosterum and Curran's intuition that this is not immoral.

A slight modification of this scenario raises a difficulty for van Oosterum and Curran. If the diagnosis was incorrect, and the fetus does survive to develop FAS, my intuition is that the pregnant woman has done something immoral. However, since she acted 'on the relevant, available information',[3] she did not violate the principle of procreative beneficence, and on van Oosterum and Curran's account, she did not act immorally. On impairment, this can easily be explained: the fetus was not actually maximally impaired, and so the pregnant mother did impair it by inflicting FAS.

Hendricks offers a similar scenario in support of impairment as the reason for why causing FAS is immoral, which van Oosterum and Curran consider. He suggests the example of Wanda, a pregnant woman who gives her fetus FAS while fully intending to have an abortion.[7] Wanda keeps postponing the abortion until it is too late, and her child is born with FAS. It seems that Wanda acted immorally, but she believed that the fetus would not be born, which means the principle of procreative beneficence does not apply, given the 'relevant, available information' provision. In response, van Oosterum and Curran argue that Wanda acts in a manner that will be foreseeably immoral with regard to the well-being of the future child, which is 'morally reckless'.[3] This is a plausible explanation, but highlights that it is not available in the previous scenario where the child survives an incorrect diagnosis to develop FAS. In this previous scenario, impairment offers a superior explanation.

There is another case that Hendricks suggests. Angela's mother is pregnant, and drinks excessively while fully intending to give birth to Angela.[1] I believe most people would share the intuition that she is acting immorally. In this scenario, Angela's mother is involved in a car crash that results in the death of her fetus. In scenarios where a child is not brought into existence, van Oosterum and Curran are clear that 'procreative beneficence is not violated and the choice cannot be described as wrong'.[3] There is no future individual with well-being to be maximised. van Oosterum and Curran could appeal to the 'relevant, available information' provision to argue that Angela's mother acted immorally, but they would need to modify the principle to clarify that this applies even in situations where there is no future individual. By contrast, impairment has no difficulty accounting for the immorality of Angela's mother's actions.

From these scenarios, I conclude that van Oosterum and Curran have failed to show that impairment is not a *pro tanto* reason for the immorality of causing FAS. Additionally, I have highlighted some difficulties with their account of procreative beneficence. It is also worth noting that they do not actually endorse the principle of procreative beneficence: they note it has been heavily criticised for other reasons. Instead, they state in a footnote they believe that 'we, minimally, have a *pro tanto* reason to act in a way which will maximise the well-being of the child we bring into existence'.[3] It is unclear how this works in scenarios where the pregnant mother is intuited to act immorally but the fetus does not survive, particularly as there is no provision for her to act on the information available at the time.

CONCLUSION

van Oosterum and Curran have argued that over-riding reasons can be found that justify removing a fetus from an unwanted pregnancy, even if in the process it suffers similar impairments to FAS. This, they claim, renders the impairment argument inefficacious. In response, I have explained that FAS is a convenient example for use in the impairment argument, and that if more severe impairments are considered, over-riding reasons are much more difficult to find, particularly for normal pregnancies. I also argue, *contra* van Oosterum and Curran, that impairment offers a superior explanation for the moral asymmetry of certain cases of FAS than their proposal based on procreative beneficence.

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